

Message Text

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ACTION IO-13

INFO OCT-01 ADP-00 AF-10 ARA-11 EA-11 EUR-25 NEA-10 RSC-01

ACDA-19 GAC-01 CIAE-00 DODE-00 NSAE-00 NSCE-00 SSO-00

USIE-00 PM-09 H-02 INR-10 L-03 NSC-10 PA-03 PRS-01

SS-15 RSR-01 INRE-00 MBFR-03 SAJ-01 /160 W

----- 104029

O R 181850 Z MAY 73

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 9419

INFO USUN NEW YORK 8844

C O N F I D E N T I A L GENEVA 2390

E. O. 11652: GDS

TAGS: PFOR, UN

SUBJ: DEFINITION OF AGGRESSION COMMITTEE

REF: GENEVA 2358

1. TO ASSIST DEPARTMENT IN ITS OVERALL ASSESSMENT OF
SITUATION RE DEFINITION OF AGGRESSION IN CONTEXT OF
REFTEL, FOLLOWING TEXT IS ROUGH OUTLINE OF GENERAL
STRUCTURE OF "DEFINITION" WHICH DELEGATION SEES AS POSSIBLY
EMERGING IN COURSE OF DISCUSSIONS. DELEGATION'S COMMENTS AND
REQUEST FOR GUIDANCE CONTAINED PARAS 2-5 BELOW.

BEGIN TEXT

ART I.

AGGRESSION IS A USE OF ARMED FORCE BY A STATE AGAINST
ANOTHER STATE IN ANY MANNER INCONSISTENT WITH THE CHARTER
OF THE UNITED NATIONS (AND DETERMINED IN ACCORDANCE WITH
THIS DEFINITION) (AS SET FORTH IN THIS DEFINITION).

ART II.

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THE FIRST USE OF ARMED FORCE IN CONTRAVENTION OF THE
UNITED NATIONS CHARTER SHALL CONSTITUTE PRIMA FACIE

EVIDENCE OF AN ACT OF AGGRESSION PROVIDED, HOWEVER, THAT
THE SECURITY COUNCIL MAY, IN CONFORMITY WITH ITS POWERS
AND OBLIGATIONS UNDER THE CHARTER, CONCLUDE THAT A
DETERMINATION TO THAT EFFECT WOULD NOT BE JUSTIFIED IN THE
LIGHT OF OTHER RELEVANT CIRCUMSTANCES, INCLUDING, AS
EVIDENCE, THE PURPOSES OF THE STATES INVOLVED.

ART III.

WITHOUT PREJUDICE TO THE DISCRETION OF THE SECURITY
COUNCIL TO DETERMINE OTHER ACTS TO BE ACTS OF AGGRESSION,
THE PROVISIONS OF ARTICLE II SHALL APPLY TO ANY OF THE
FOLLOWING USES OF ARMED FORCE:

(LIST OF ACTS)

THE SECURITY COUNCIL MAY, HOWEVER, IN A PARTICULAR CASE
REFRAIN FROM THE DETERMINATION OF AN ACT OF AGGRESSION IF
THE ACT OR ACTS IN QUESTION ARE TOO MINIMAL TO JUSTIFY
SUCH A DETERMINATION.

ART IV.

NOTHING IN THIS DEFINITION SHALL BE CONSTRUED AS
ENLARGING OR DIMINISHING IN ANY WAY THE SCOPE OF THE
PROVISIONS OF THE CHARTER CONCERNING CASES IN WHICH THE
USE OF FORCE IS LAWFUL.

(PROVISIONS ON SELF- DETERMINATION, LEGAL CONSEQUENCES)
END TEXT

2. DEPARTMENT WILL NOTE THAT CORNERSTONE OF ENTIRE TEXT
IS ARTICLE II, WHICH IS THE GUYANESE TEXT AS IT EMERGED
FROM CG III (GENEVA 2342). ACCEPTANCE OF THIS PROVISION
BY NON- ALIGNED DELS WILL MAKE IT ESSENTIALLY IMPOSSIBLE
FOR THEM TO ARGUE THAT ACTS INCLUDED IN LIST CATEGORICALLY
" SHALL" CONSTITUTE ACTS OF AGGRESSION EVEN IF IN VIOLATION
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OF CHARTER. AS REPORTED GENEVA 2348, WE HAVE SUGGESTED
WORD " MAY" BUT REACTION IN CG SUGGESTED THIS SOLUTION
WOULD NOT BE ACCEPTABLE, SINCE IT WOULD REFLECT TOO
OBVIOUSLY THE ABANDONMENT OF THE BASIC CONCEPT OF
AUTOMATICITY WHICH NON- ALIGNED HAVE FOUGHT FOR FROM
BEGINNING BUT WHICH EFFECTIVELY ELIMINATED BY ARTICLE II.
FRENCH HAVE SUGGESTED-- EVEN INSISTED-- THAT GUYANESE TEXT

ON PRIORITY AND INTENT SHOULD COME BEFORE LIST OF ACTS.
THIS STRIKES US AS AN EXCELLENT APPROACH WHICH COULD LEAD
TO ACCEPTANCE OF INTRODUCTORY PHRASE LIKE THAT SHOWN IN
ARTICLE III. THIS LANGUAGE, WHICH REFLECTS ONLY OUR OWN
THINKING AFTER CONSULTATION WITH FRENCH DEL, USES WORD
" SHALL" BUT AVOIDS AUTOMATICITY OF WORD " SHALL" IN
INTRODUCTORY PASSAGE TO
E E E E E E E

*** Current Handling Restrictions *** n/a

*** Current Classification *** CONFIDENTIAL

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Draft Date: 18 MAY 1973
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Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: thigpegh
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Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Unique ID: 00
Drafter: n/a
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Executive Order: RR
Errors: n/a
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TAGS: PFOR, UN
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USUN NEW YORK
Type: TE
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